

GOVERNMENT PROPOSED JURY INST. NO. 220

Statute Defining Offense

Count ____ of the indictment charges the defendant with violating Section 7212(a) of the Internal Revenue Code. Section 7212(a) of the Internal Revenue Code provides, in pertinent part, as follows:

Whoever * * * in any * * * way corruptly * * * obstructs or impedes, or endeavors to obstruct or impede the due administration of this title, [*shall be guilty of an offense against the United States*].

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26 U.S.C. § 7212(a)

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Essential Elements of Section 7212(a)

The government must establish the following three essential elements beyond a reasonable doubt to establish a violation of the offense charged in Count ____ of the Indictment:

First: The defendant in any way corruptly;

Second: Endeavored to;

Third: Obstruct or impede the due administration of the Internal Revenue Laws.

United States v. Williams, 644 F.2d 696, 699 (8th Cir.), *cert. denied*, 454 U.S. 841 (1981) ("Laws" substituted for "Code" for ease of understanding.)

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Definition of "Endeavor"

To "endeavor" is to undertake an act or to attempt to effectuate an arrangement or to try to do something, the natural and probable consequences of which is to obstruct or impede the due administration of the Internal Revenue Laws.

Instruction used in *United States v. Dykstra*, 991 F.2d 450, 453 (8th Cir.), *cert. denied*, 114 S. Ct. 222 (1993), relying on definition of endeavor used in an obstruction case, *United States v. Silverman*, 745 F.2d 1386, 1393, 1396 n. 12 (11th Cir. 1984)

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Endeavor - Defined

The term "endeavors" as used in these instructions means to knowingly and deliberately act or to knowingly and deliberately make any effort which has a reasonable tendency to bring about the desired result.

It is not necessary for the government to prove that the "endeavor" was successful or, in fact, achieved the desired result.

Devitt, Blackmar and O'Malley, *Federal Jury Practice and Instructions* (4th Ed. 1990), Section 41.05

United States v. Martin, 747 F.2d 1404, 1409 (11th Cir. 1984)

United States v. Williams, 644 F.2d 696, 699 n.14 (8th Cir.), *cert. denied*, 454 U.S. 841 (1981)

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Definition of "Corruptly"

To act "corruptly" is to act with the intent to secure an unlawful advantage or benefit either for oneself or for another.

United States v. Reeves, 752 F.2d 995, 1001 (5th Cir.), *cert. denied*, 474 U.S. 834 (1985)

United States v. Dykstra, 991 F.2d 450, 453 (8th Cir.), *cert. denied*, 114 S. Ct. 222 (1993)

United States v. Yagow, 953 F.2d 423, 427 (8th Cir. 1992)

United States v. Popkin, 943 F.2d 1535, 1540 (11th Cir. 1991); *cert. denied*, 112 S. Ct. 1760 (1992)

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Definition of "Obstruct or Impede"

To "obstruct or impede" is to hinder or prevent from progress, check, stop, also to retard the progress of, make accomplishment difficult and slow.

Black's Law Dictionary pg. 972 (5th Ed. 1979)